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June 27, 2005

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: June 25, 2004

Case Number: TSO-0125

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (the individual) to hold an access authorization (also called a security clearance). The local DOE security office suspended the individual's access authorization after determining that information in its possession created substantial doubt about the individual's eligibility for an access authorization under the Department of Energy (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As explained below, I have concluded that the individual's access authorization should be restored.

**Background**

The individual works for a contractor at a DOE facility where some assignments require an access authorization. The local security office issued a Notification Letter to the individual on May 13, 2004. The Notification Letter alleges that DOE has substantial doubt about the individual's eligibility for a security clearance, based on disqualifying criteria set forth in section 710.8, paragraphs (h) and (j).

The Notification Letter alleges that the individual has been diagnosed by a psychiatrist as suffering from alcohol abuse. *See* 10 C.F.R. § 710.8(j). This charge is based on an evaluation of the individual by a DOE consultant psychiatrist conducted on February 5, 2003. In her report dated February 15, 2003, the DOE psychiatrist diagnosed the individual as suffering from alcohol abuse, in full early remission, without adequate evidence of rehabilitation or reformation. The DOE psychiatrist also stated in her report that alcohol abuse is an illness that causes or may cause a significant defect in judgment or reliability. *See* 10 C.F.R. § 710.8(h).

The Notification Letter also listed five alcohol-related arrests that occurred in 1980, 1990, 1993, 1995, and 2002. These arrests and the DOE psychiatrist's evaluation are the bases for the security concerns in the Notification Letter.

Because of these security concerns, the case was referred for administrative review. The individual filed a request for a hearing. The local security office transmitted the hearing request to the Office of Hearings and Appeals (OHA), and the Director of OHA appointed me as the Hearing Officer in this case. At the hearing I convened, the DOE Counsel called one witness, the DOE psychiatrist. The individual, who was represented by counsel, testified on his own behalf, and called seven other witnesses: a licensed chemical dependency counselor, two medical doctors, two supervisors and two co-workers. The local security office submitted 28 written exhibits. The individual submitted a written answer to the Notification Letter and introduced 6 written exhibits during the hearing.

### **Standard of Review**

The applicable DOE regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). In resolving questions about the individual’s eligibility for access authorization, I must consider the relevant factors and circumstances connected with the individual’s conduct. These factors are set out in section 710.7(c):

the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

A DOE administrative review proceeding under 10 C.F.R. Part 710 is authorized when the existence of derogatory information leaves unresolved questions about an individual’s eligibility for access authorization. A hearing is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). Once DOE has presented derogatory information affecting an individual’s eligibility for access authorization, the individual must come forward with evidence to convince DOE that granting or restoring his or her access authorization “would not endanger the common defense and security and would be clearly consistent with the national interest.” *See, e.g., Personnel Security Hearing*, Case No. TSO-0118, 29 DOE ¶ 82,771 at 85,616 (2004), and cases cited therein. In addition, any doubt as to an individual’s access authorization eligibility shall be resolved in favor of the national security. 10 C.F.R. § 710.7(a). For the reasons discussed below, it is my opinion that the individual has resolved the security concerns described in the Notification Letter, and therefore his access authorization should be restored.

### Findings of Fact

In June 1980, the individual was arrested for Driving While Under the Influence. The individual first informed the DOE of this arrest in a Questionnaire for Sensitive Positions (QNSP) that he signed on December 19, 1991. DOE Exhibit (Ex.) 3-9. According to the DOE psychiatrist's report, the individual paid a \$300 fine and attended a court-ordered four-week rehabilitation program. DOE Ex. 2-1 at 3. In September 1990, the individual was arrested for Possession of an Open Container. The individual has consistently explained that a passenger in the car he was driving was in possession of the open container of alcohol. According to the laws of the state in which the arrest occurred, he as the driver was responsible for the presence of the open container, and he paid the fines associated with this arrest. *See, e.g.*, DOE Ex. 4-3 (Transcript of October 4, 1993 Personnel Security Interview) at 44. In August 1993, the individual was arrested for Driving Under the Influence of alcohol. Two Breathalyzer tests administered shortly after the arrest yielded results indicating that his blood alcohol content was .10 and .09 percent, in excess of the state limit of .08. *Id.* at 11. At the Personnel Security Interview following that arrest, the individual stated that he felt he was acting responsibly by drinking at the rate of no more than one drink per hour, that it was his mistake that he had just barely exceeded the legal limit, and that he intended not to drink and drive in the future. *Id.* at 73-74. In July 1995, the individual was arrested for Public Intoxication while in Control of a Motor Vehicle. Although all the facts surrounding this arrest are not clear, I conclude that at the time of the arrest the individual was seated behind the steering wheel of his vehicle and was, by his own admission, intoxicated. DOE Ex. 4-2 (Transcript of September 13, 1995 Personnel Security Interview) at 19. At the Personnel Security Interview conducted after this arrest, the individual stated that his alcohol consumption had increased since his 1993 arrest to eight to ten beers per week, and he intended to reduce his consumption to one to four per week. *Id.* at 24, 34.

In April 2002, the individual was arrested for Driving While Intoxicated. DOE Ex. 3-4 (Incident Information Interview). He failed the field sobriety test and refused to submit to a breath test. DOE Ex. 4-1 (Transcript of July 17, 2002 Personnel Security Interview) at 5-8. During the Personnel Security Interview conducted after this arrest, the individual stated that he consumed his last alcoholic drink on July 7, 2002, the day of his grandmother's funeral. *Id.* at 13. He also stated, as he had before, that he intended never again to drink and drive, and further intended to cut back on his alcohol consumption. *Id.* at 18-19. At a court proceeding in August 2002, he was found guilty, fined, and placed on community supervision in lieu of imposition of a jail sentence. DOE Ex. 4-1. Additional terms of the disposition of his case included attendance at a DWI educational program, submission to alcohol testing, prohibition from entering bars and cocktail lounges, and submission to drug and alcohol evaluation and treatment, as recommended. *Id.*

Following the 2002 PSI, the local security office referred the individual to the DOE psychiatrist for evaluation. In her report to the local security office, the DOE psychiatrist diagnosed the individual as suffering from Alcohol Abuse, Early Full Remission, as

defined in the Diagnostic and Statistical Manual of the American Psychiatric Association, Fourth Edition, Text Revision (DSM IV-TR). To support a diagnosis of alcohol abuse under the DSM IV-TR, the evaluating psychiatrist should find that the individual displays “a maladaptive pattern of substance use leading to clinically significant impairment or distress, as manifested by one (or more) of [four listed criteria], occurring within a 12 month period.” DOE Ex. 2-1 (Report of DOE Psychiatrist, February 15, 2003) at 16. During the DOE psychiatrist’s interview with the individual, he admitted that he had driven many times under the influence of alcohol and that he had exercised poor judgment in doing so even though he felt at the time that he was not intoxicated. Consequently, the DOE psychiatrist concluded that the individual met the second criterion: “recurrent substance use in situations in which it is physically hazardous (e.g., driving an automobile operating a machine when impaired by substance use).” *Id.* In addition, she believed that the individual might possibly suffer from a more serious illness. She found that the individual displayed a number of self-serving traits, including minimizing his involvement with alcohol, ascribing his many alcohol-related arrests to bad luck, and interpreting evaluations and test results in unreasonably favorable manners. As a result, she could not “completely rule out the diagnosis of alcohol dependence.” *Id.* at 16-18.

In her report, the DOE psychiatrist found inadequate evidence of rehabilitation or reformation from the individual’s alcohol problems. She stated that the individual had not attempted any kind of professional treatment for substance abuse. Moreover, he had not even accepted that he had a drinking problem, maintaining that he could quit at any time. *Id.* at 18. As adequate evidence of *rehabilitation*, the DOE psychiatrist required two years of abstinence from alcohol, including either one year of participation in Alcoholics Anonymous meetings (100 hours, with a sponsor), or six months of participation in a professionally led substance abuse program (50 hours). *Id.* As adequate evidence of *reformation*, the DOE psychiatrist required two years of absolute sobriety if the individual participated in one of the specified rehabilitation programs, or three years of absolute sobriety if he did not. *Id.* at 18-19.

The DOE psychiatrist also determined that the individual had an illness, alcohol abuse, that causes or may cause a significant defect in judgment or reliability, at least until such time as the individual shows adequate evidence of rehabilitation or reformation from his alcohol abuse. *Id.* at 19-20.

### **Testimony of the Witnesses at the Hearing**

#### **The DOE Psychiatrist**

The DOE Psychiatrist testified about the details of her evaluation session with the individual. She stated that the results of the laboratory tests she ordered to be performed on the individual provided no conclusive information about whether the individual was using alcohol to excess. Transcript of Hearing in Case No. TSO-0125 (Tr.) at 17-20. She did not administer a substance abuse screening test, such as the Substance Abuse Subtle Screening Inventory (SASSI), to the individual, because he had recently taken one. Tr.

at 21. Neither in the course of her interview with the individual, nor in earlier interviews, transcripts of which she reviewed, did the individual volunteer information that would support a diagnosis of alcohol dependence. *Id.* at 21-22. Of the four criteria that support a diagnosis of alcohol abuse, only two possibly applied to the individual. In the DOE psychiatrist's opinion, the third criterion, recurrent legal problems within a 12-month period, does not strictly apply in his case because, while he has at least four alcohol-related legal problems in his past, they are spaced in time such that none occurred within 12 months of another. She determined, however, that the second criterion did apply to the individual, as discussed above. *Id.* at 22-24. Relying in part on a 20-year-old case study of more than 20,000 drivers with DWI records that found that nearly 100% of those with three or more DWIs were problem drinkers, the DOE psychiatrist clearly felt that, in her clinical judgment and not just on the basis of the DSM criteria, the individual suffered from alcohol abuse. *Tr.* at 27-28. She further stated that at the time of her evaluation, the individual did not contemplate that he had a drinking problem, even though he had been sent to post-DWI education classes twice. *Tr.* at 31. Because he had no insight into his drinking problem, she reasoned, the individual had achieved neither rehabilitation nor reformation. *Tr.* at 35.

### **The Health Care Professionals**

A substance abuse counselor examined the individual in August 2004. At the hearing he testified that, as a result of that examination, which included a SASSI assessment and a structured interview, he determined that the individual does not meet the criteria for alcohol abuse or alcohol dependence. *Tr.* at 44; *see* Individual's Ex. 4. His opinion was based in part on facts he ascertained during the interview: that the individual's last date of alcohol consumption, by his self-report, was July 8, 2002, more than 25 months before the examination, and that the last legal consequence of his alcohol consumption was his DWI in April 2002. *Id.* at 45, 50.

An onsite psychologist testified that the facility's annual appraisals of the individual's fitness for duty have consistently found the individual to be in "satisfactory psychological and emotional health." *Id.* at 63-64. He also testified that he met with the individual shortly after his April 2002 DWI arrest, and that his notes from that meeting indicated that the individual had insight into his alcohol problem and realized that he should no longer drink. *Id.* at 65. He then referred the individual to a substance abuse professional for three sessions, paid for by his employer. The professional evaluated the individual and was unable to conclude whether the individual suffered from any kind of alcohol problem. *Id.* at 68. *See* DOE Ex. 2-2 (report of substance abuse professional). At the hearing, the onsite psychologist testified that, with hindsight, he realizes that both he and the substance abuse professional should have recommended the individual for intensive outpatient treatment, but neither saw the need for it at the time. *Id.* at 98-99. In the end, the onsite program allowed the individual to continue working as usual. *Id.* at 69. An anonymous letter of January 2003, alleging the individual works while intoxicated, triggered a panel review of the individual. *Id.* at 72; *see* DOE Ex. 3-3. The individual was not placed on any medical restriction as a result of that review, including any requirement that he attend treatment for an alcohol-use disorder, because, as the

psychologist noted, he had been sober for six or seven months at that time. *Id.* at 75-78. On questioning, however, the psychologist testified that he agreed with the DOE psychiatrist that as of February 2003 the individual was suffering from alcohol abuse in early full remission. Nevertheless, the psychologist stated that, as of the hearing, in light of the individual's two years of abstinence he believed that the individual presented no safety, reliability or security concerns. *Id.* at 104-05.

The occupational medical director testified regarding medical assessments that the facility has performed concerning the individual. He explained that his office generates a summary of each employee's medical information and reviews the data in search of deviations from normal data that are significant as indicators of medical problems. *Id.* at 109-110. He stated that the individual's summary for data collected in May 2002, just after his DWI arrest, revealed no abnormal data that would indicate alcohol problems or alcohol disorders. *Id.* at 111-112 (liver function tests and mean corpuscular volume within normal ranges). He also reported that the individual was subjected to six random breath alcohol tests during the nine months following his DWI arrest, and the results of all six tests were negative. *Id.* at 121.

### **The Friends and Co-Workers**

Four co-workers testified on behalf of the individual. Much of their testimony concerned an anonymous letter that the DOE had submitted into the record. *See* DOE Ex. 3-3. The author of the anonymous letter wrote that the individual comes to work smelling of alcohol and sleeps off his inebriation while on duty. *Id.* Two of the witnesses are supervisors of the individual. They explained that the individual is observed and assessed for fitness for duty each time he arrives for work. *Id.* at 57, 123. One of the supervisors testified that he was confident that, had the individual arrived for work in the condition claimed in the anonymous letter, he would not have been permitted to start work. *Id.* at 124. He also stated that he simply did not believe the accusations made in the letter. *Id.* The other supervisor stated that he had never observed the individual at work smelling of alcohol, under its influence, or sleeping while on duty. *Id.* at 56. The remaining two witnesses were co-workers with whom the individual socializes. One stated that the individual told him that he intended to stop drinking in May 2002, and that he has not seen the individual drink any alcohol since then. *Id.* at 130-31. The other, who has known the individual for more than ten years, testified that he knew the individual had decided to stop drinking, though as a non-drinker he had never seen the individual drink. *Id.* at 139-40. He also stated that the individual is the kind of person who follows through on his commitments, and that he is confident that the individual will remain committed to his sobriety. *Id.* at 141.

### **The Individual**

At the hearing, the individual testified about his involvement with alcohol since his April 2002 DWI arrest. He reported the arrest immediately to the DOE. *Id.* at 150. Five days later he met with the onsite psychologist, who suggested he abstain from alcohol and attend three sessions with the substance abuse professional. *Id.* at 151. His

understanding was that there was no recommendation to pursue additional treatment for any alcohol problem. *Id.* at 154. He testified that, with the exception of a toast to his grandmother on the day of her funeral in July 2002, he has abstained from all alcohol since May 2002. *Id.* at 155-56. His rationale for abstaining is that by eliminating any alcohol consumption he can eliminate any possible alcohol-related problems in the future. *Id.* at 156.

He also responded to the DOE's concerns about his commitment to abstinence. At his July 2002 Personnel Security Interview, he expressed his intentions regarding future alcohol use as cutting back on quantity and not drinking and driving. DOE Ex. 4-1 at 18-19. At the February 2003 evaluation with the DOE psychiatrist, his intentions were to not drink during the probation period following his DWI conviction, but he expressed no intention beyond that time. DOE Ex. 2-1 at 11. At the hearing, the individual spoke with more conviction about his intention to abstain. He explained that the DWI class he attended after the July 2002 Personnel Security Interview firmed up his resolve that he should not drink at all. Tr. at 163. He further explained that at the time he spoke with the DOE psychiatrist, he had no intention to drink in the future, but he was focusing on his goal of abstaining through the end of the probation period. *Id.* at 165. That probation period ended in August 2003, and from that point through the date of the hearing one year later, the individual continued to abstain from alcohol. He achieved this through purely internal motivation, without the benefit of any type of formalized treatment. *Id.* at 172-74.

He also stated that he has changed his outlook on alcohol consumption. He now accepts that his alcohol-related arrests were not merely the result of bad luck but rather that he bore the responsibility for his actions. *Id.* at 172. Finally, he testified that he did not receive the DOE psychiatrist's report, and thus learn of her recommendation for treatment, until shortly before the hearing. *Id.* at 179. Up to that point, he had not understood that any professional had recommended he enter into treatment, and he maintained that he had always followed their recommendations. *Id.* at 171.

### **The DOE Psychiatrist's Second Appearance**

The DOE psychiatrist was recalled to testify after she had heard all the testimony presented at the hearing. She acknowledged that the individual did not have the benefit of her recommendation of treatment, because he had not received her report in a timely fashion. *Id.* at 187. She recognized that he had abstained from alcohol for more than two years and had received no treatment related to his alcohol problems. Because the individual had not pursued any form of treatment, the only recommendation applicable to the individual, of those recommendations for adequate evidence of rehabilitation and reformation that the DOE psychiatrist had set forth in her report, is reformation by means of three years of absolute sobriety. *Id.* at 189. After explaining why she initially arrived at three years as a suitable period of abstinence on the basis of the information she gathered at the February 2003 evaluation, she continued:

And that is why . . . I think three years—the longer they stay sober, whether they have poor insight at the start or not, the greater chances I’m taking that it will dawn on them, something will happen in the three years that maybe the [light bulb] will really turn on. Now, this is just speeded up if there has been treatment. But in his case, because there has not been any treatment, that’s why I recommended three years. And, in fact, I would have a . . . different recommendation now given what I have heard. . . . Because I know he has . . . two years, I think that that is acceptable to me as adequate reformation.

*Id.* at 191-92. The DOE psychiatrist went on to clarify that she would have preferred that the individual receive treatment and thus achieve rehabilitation as well as reformation. *Id.* at 192-93. The hearing officer then reminded the witness that adequate evidence of either rehabilitation or reformation may be sufficient to mitigate a national security concern based on alcohol abuse or dependence, and asked her whether, “as of today, . . . what is your opinion as to whether [the individual] has achieved adequate reformation, based on the testimony you have heard today, including his two years and two months of abstinence, and his testimony regarding . . . his insight into his problem at this point?” *Id.* at 195-96. The DOE psychiatrist’s response was, “. . . [A]t this time with the additional information, I believe that he has adequate reformation, but he doesn’t have adequate rehabilitation.” *Id.* at 196.

### **Analysis**

A diagnosis of alcohol abuse raises concerns regarding a person’s willingness or ability to protect classified information, and drinking to excess may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information. A history or pattern of alcohol-related arrests creates doubt about a person’s judgment, reliability and trustworthiness. The local security office had a substantial basis in the record for raising these concerns. Upon consideration of the evidence presented at the hearing, however, I find that the individual has mitigated all of the concerns in the Notification Letter.

I place the greatest weight on the DOE psychiatrist’s expert opinion at the hearing that the individual has shown adequate evidence of reformation, and that he no longer suffers from alcohol abuse. The DOE psychiatrist reached this opinion in spite of the fact that the individual had not met the treatment and abstinence requirements set out in the evaluation report written 19 months before the hearing. The record shows that the individual had no knowledge of the DOE psychiatrist’s treatment recommendation until shortly before the hearing, and there is no evidence that any other health professional recommended that he follow a course of treatment other than the three sessions with the substance abuse professional that he completed. I am also persuaded that the individual consciously changed his behavior after last DWI arrest in April 2002. I find the individual produced credible testimony that he has not consumed any alcohol since July 2002, more than two years before the hearing. Although his abstinence was initially required by external direction, i.e. a condition of probation, the individual has continued



to maintain his abstinence since then entirely by means of internal motivation. I agree with the DOE psychiatrist that the individual has achieved his goal of reformation from alcohol abuse.

Although the DOE psychiatrist expressed her opinion that the individual had not achieved rehabilitation, the DOE regulations setting forth the factors and circumstances surrounding an individual's conduct instruct me to consider "the absence or presence of rehabilitation *or* reformation and other behavioral changes." 10 C.F.R. § 710.7(c) (emphasis added). In light of his reformation, insight and internal motivation, I conclude that the individual has mitigated the local security office's concerns under Criterion J. Furthermore, because the individual now shows adequate evidence of reformation from his alcohol abuse, he no longer suffers from an illness that causes or may cause a significant defect in judgment or reliability. Consequently, the individual has also mitigated the local security office's concerns under Criterion H.

### **Conclusion**

Based on the record in this proceeding, I find that the individual has resolved the security concerns under 10 C.F.R. § 710.8(h) and (j) that the local security office specified in its Notification Letter. For the reasons explained in this decision, I find the individual demonstrated that restoring his access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. Accordingly, it is my decision that the individual's access authorization should be restored.

William M. Schwartz  
Hearing Officer  
Office of Hearings and Appeals

Date: June 27, 2005